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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

BLAIR and RAQUEL SAMPSON, husband
and wife,

No. 18-2-03015-03

Plaintiffs,

FIRST AMENDED COMPLAINT

vs.

BRENT and HOLLI MARTELL, individually
and as a marital community, PREMIER
LANDSCAPING & DESIGN, INC., a
Washington Corporation, and
AMERICAN CONTRACTORS
INDEMNITY COMPANY, Bond No.
100258533,

Defendants.

COMES NOW, Plaintiffs, BLAIR and RAQUEL SAMPSON, and allege the
following facts for the relief requested.

I. PARTIES

1.1 Plaintiffs, BLAIR and RAQUEL SAMPSON, ("Plaintiffs") are husband and wife
residing at 102906 Heather Drive, Kennewick, Benton County, Washington.

1.2 Defendants, BRENT and HOLLI MARTELL, are husband and wife residing in Benton County, Washington.

1.3 Defendant, PREMIER LANDSCAPING & DESIGN, INC. (“Premier Landscaping”), is a licensed general contractor in the State of Washington under Washington State Labor and Industries Contractor’s Registration License No. PREMILI012RB, with an effective date of December 2, 1999 and an expiration date of December 17, 2018.

1.4 3rd Party Defendant, AMERICAN CONTRACTORS INDEMNITY COMPANY, (“American”) is the bonding company for Premier Landscaping & Design, LLC and has issued Bond No. 100258533 to cover Premier Landscaping & Design, LLC. The effective date for the aforementioned bond is September 22, 2014.

II. JURISDICTION AND VENUE

2.1 Jurisdiction and venue are proper pursuant to RCW 4.12.010 and RCW 18.27.040(3).

III. FACTUAL ALLEGATIONS

3.1 Premier Landscaping is a for profit corporation.

3.2 Brent Martell is the sole shareholder of Premier Landscaping.

3.3 Holli Martell benefits from Brent Martell's ownership of Premier Landscaping as part of their marital community.

3.4 Premier Landscaping is a construction company that performs conduct in the trade of construction in the State of Washington

1 3.5 American is the surety for Premier Landscaping and issued Bond. No. 100258533
2
3 for Premier Landscaping.

4
5 3.6 Premier Pools and Premier UV Coatings are registered trade names of Premier
6
7 Landscaping & Design, Inc.

8
9 3.7 In the summer of 2016, Plaintiffs contacted Brent Martell to inquire whether he
10 could perform a construction project at Plaintiffs' residence. Specifically, Plaintiffs
11 wanted Mr. Martell to perform a complete backyard remodel which included, but
12 was not limited to, installing landscaping and building a pool house, pool, pool slide,
13 and hot tub in their backyard (the "Project").

14
15 3.8 Mr. Martell had plans for the Project drawn up. Mr. Martell sent the plans to
16 Plaintiffs for review (the "Plans").

17
18 3.9 On or about January 2017, Mr. Sampson met with Mr. Martell at Mr. Martell's
19 residence to discuss the Project pursuant to the Plans.

20
21 3.10 During the January 2017 meeting, Mr. Sampson asked Mr. Martell how much it
22 would cost for Mr. Martell to perform the necessary work pursuant to the Plans in
23 generally accepted professional standards and in compliance with building codes.
24 Mr. Martell verbally told Mr. Sampson that he could perform the work pursuant to
25 the Plans in generally accepted professional standards and in compliance with
26 building codes for \$400,000.

3.11 Mr. Sampson verbally accepted Mr. Martell's offer for to perform the work pursuant to the Plans in generally accepted professional standards and in compliance with building codes for a total of \$400,000.

3.12 Mr. Martell verbally promised to complete the work pursuant to the Plans by June 1, 2017.

3.13 Plaintiffs would not have entered the contract if Mr. Martell had quoted a price more than \$400,000.

3.14 Mr. Martell knew Plaintiffs would not have entered the contract if he had quoted a price more than \$400,000.

3.15 Plaintiffs assumed Premier Landscaping would perform the work for the Project, but did not have a written contract identifying the contracting party.

3.16 In February 2017, Mr. Martell and/ or Premier Landscaping began performing under the parties' contract by performing work pursuant to the Plans.

3.17 In March 2017, Plaintiffs made a \$20,000 down payment towards the contract price
of \$400,000.

3.18 In April 2017, Plaintiffs made a \$100,000 payment towards the contract price of
\$400,000.

3.19 In May of 2017, Plaintiffs made a \$100,000 payment towards the contract price of
\$400,000.

3 20 Between March 2017 and May 2017 Plaintiffs made changes to the Plans

1 3.21 In April 2017, Plaintiffs asked Mr. Martell for an updated price on the Project to
2 incorporate the changes Plaintiffs to the Plans.
3

4 3.22 In June 2017, Mr. Martell sent Plaintiffs proposals that detailed both the cost for
5 work pursuant to the Plans and the changes Plaintiffs made to the Plans.
6

7 3.23 The proposals identified in Paragraph 3.22 listed Premier Landscaping as the
8 contractor and obligor, not Mr. Martell.
9

10 3.24 The proposals identified in Paragraph 3.22 had an overall cost in excess of
11 \$638,000 for the Project.
12

13 3.25 Even without accounting for the changes Plaintiffs made to the Plans, the proposals
14 identified in Paragraph 3.22 listed the cost of the work pursuant to the Plans for
15 more than the originally agreed to price of \$400,000.
16

17 3.26 Plaintiffs did not accept the proposals identified in Paragraph 3.22.
18

19 3.27 In June 2017, Plaintiffs made a \$100,000 payment towards the contract price of
20 \$400,000.
21

22 3.28 In July 2017, Plaintiffs and Mr. Martell met to discuss the proposals identified in
23 Paragraph 3.22.
24

25 3.29 In July 2017, Plaintiffs begrudgingly agreed to pay an additional \$120,000 for Mr.
26 Martell and/ or Premier Landscaping to complete the work on the project pursuant to
27 the Plans and change orders.
28

29 3.30 In July 2017, Plaintiffs made a \$100,000 payment towards the modified contract
30 price of \$520,000.
31

3.31 In October 2017, Plaintiffs made a \$97,750 payment towards the modified contract price of \$520,000.

3.32 In October 2017, Plaintiffs made a \$2,250 payment to a subcontractor who Mr. Martell and/ or Premier Landscaping did not pay for work the subcontractor performed at the Plaintiffs' residence.

3.33 As of October 2017, Plaintiffs paid the full modified contract price of \$520,000.

3.34 In October 2017, Plaintiffs informed Mr. Martell that the coating Mr. Martell and/or Premier Landscaping applied to Plaintiffs' pool, hot tub, and pool slide failed and needed to be corrected.

3.35 In October 2017, Mr. Martell promised Plaintiffs that he and/ or Premier Landscaping would fix the defective pool, hot tub, and pool slide coating, no matter what it took.

3.36 Mr. Martell and/ or Premier Landscaping did not fix the defective coating in Plaintiffs' pool, hot tub, and pool slide.

3.37 Plaintiffs had to hire a third party to fix the defective coating that Mr. Martell and/or Premier Landscaping applied to their pool, hot tub, and pool slide.

3.38 Mr. Martell and/ or Premier Landscaping failed to apply the coating to Plaintiffs' pool, hot tub, and pool slide in accordance with generally accepted professional standards.

3.39 In November 2017, Mr. Martell and/ or Premier Landscaping abandoned the Project and ceased performing the contractually obligated work.

3.40 Between December 2017 and October 2018, Plaintiffs discovered Mr. Martell and/or Premier Landscaping performed multiple tasks on the Project in violation of applicable building codes and/ or generally accepted professional standards including, but not limited to, the following:

- a. Mr. Martell and/ or Premier Landscaping did not install the porcelain tile pavers surrounding Plaintiffs' pool and pool house according to the porcelain tile paver manufacturer's installation instructions, which caused the porcelain tile pavers to fail.
 - b. Mr. Martell and/ or Premier Landscaping did not install the mechanical slab for the pool in compliance with applicable building code(s).
 - c. Mr. Martell and/ or Premier Landscaping did not install the backfill for the pool house in compliance with applicable building code(s).
 - d. Mr. Martell and/ or Premier Landscaping did not install the gas line for the pool house in compliance with applicable building code(s).
 - e. Mr. Martell and/ or Premier Landscaping failed to obtain requisite permit(s) to install the gas lines for the pool house in compliance with applicable building code(s).
 - f. Mr. Martell and/ or Premier Landscaping did not install the propane tank slab for the pool house in compliance with applicable building code(s).

- 1 g. Mr. Martell and/ or Premier Landscaping built the pool house, patio area, and
2 pool area with a drainage slope and channel drains that do not comply with
3 applicable building code(s).
- 4 h. Mr. Martell and/ or Premier Landscaping did not provide ground cover for
5 the pool house's foundation in compliance with applicable building code(s).
- 6 i. Mr. Martell and/ or Premier Landscaping failed to properly compact the fill
7 material around the pool and pool house in accordance with generally
8 accepted professional standards.
- 9 j. Mr. Martell and/ or Premier Landscaping failed to properly compact the fill
10 material around the pool and pool house in compliance with the permit
11 mandates and applicable building code(s).
- 12 k. Mr. Martell and/ or Premier Landscaping failed to provide adequate back fill
13 material around the pool house in compliance with permit mandates and
14 applicable building code(s).
- 15 l. Mr. Martell and/ or Premier Landscaping failed to install the short and long
16 gas lines for the hot tub in accordance with applicable build code(s).
- 17 m. Mr. Martell and/ or Premier Landscaping failed to install the swim jets in
18 Plaintiffs' pool in accordance with manufacturer's guidelines, rendering the
19 swim jets useless.

1 n. Mr. Martell and/ or Premier Landscaping failed to install proper pump for
2 septic system in the pool house in accordance with generally accepted
3 professional standards.

4 o. Mr. Martell and/ or Premier Landscaping failed to provide safety railings on
5 the pool slide in the Plans in accordance with generally accepted professional
6 standards.

7 3.41 Between October 2017 and October 2018, Plaintiffs had the following work
8 performed on their residence to complete some, but not all, of the modified scope of
9 work pursuant to the Plans and change orders that Mr. Martell and/ or Premier
10 Landscaping failed to perform and to repair some, but not all, of the defective work
11 itemized in Paragraph 3.40:

- 12 a. Install and apply exterior stucco for pool house;
- 13 b. Purchase porcelain tile pavers for the pool house that match the porcelain tile
14 pavers surrounding the pool area;
- 15 c. Install porcelain tile pavers for the pool house;
- 16 d. Install cabinets in the pool house;
- 17 e. Purchase and installation of a storm door for the back storage;
- 18 f. Complete the Project's electrical work;
- 19 g. Complete the Project's plumbing work;
- 20 h. Purchase and install two indoor ceiling fans for pool house;
- 21 i. Purchase and install four outdoor ceiling fans for pool house;

- 1 j. Purchase and install two outdoor lights for pool house;
- 2
- 3 k. Purchase and install insulation for door frames in pool house;
- 4
- 5 l. Install sheetrock in pool house around door frames;
- 6
- 7 m. Complete outdoor landscaping pursuant to the Plans;
- 8
- 9 n. Paint trim in pool house;
- 10
- 11 o. Purchase and install gate and safety railings on pool slide;
- 12
- 13 p. Purchase and install granite countertops for pool house;
- 14
- 15 q. Purchase and install backsplash tile and grout for pool house;
- 16
- 17 r. Purchase hardware for cabinets in pool house;
- 18
- 19 s. Purchase hardware for doors on pool house;
- 20
- 21 t. Install dry wall and repair cement in pool house bathroom;
- 22
- 23 u. Purchase and install gutters for pool house;
- 24
- 25 v. Install propane tank for pool house;
- 26
- 27 w. Finalize and repair HVAC system in pool house;
- 28
- 29 x. Install masonry work on hot tub, outdoor columns, pool slide, and planter
 boxes; and
- 30
- 31 y. Connect the electrical components for the pool's automatic pool cover.

32 3.42 Despite Plaintiffs paying the full contract amount, Mr. Martell and/ or Premier
33
34 Landscaping have not completed the modified scope of work pursuant to the Plans.

35
36 3.43 Despite Plaintiffs paying the full contract amount, Mr. Martell and/ or Premier
37
38 Landscaping have not completed all change orders for the Project.

3.44 Mr. Martell spent money received from Plaintiffs for his own personal benefit rather than on the Project.

3.45 Mr. Martell spent money received from Plaintiffs for the benefit of his martial community rather than on the Project.

3.46 Mr. Martell charged Plaintiffs for building materials that he did not purchase or supply for the Project.

3.47 Mr. Martell had no intention of honoring the original contract price with Plaintiffs of \$400,000.

3.48 Mr. Martell had no intention of honoring the modified contract price with Plaintiffs of \$520,000.

IV. COUNT ONE – BREACH OF CONTRACT

4.1 Plaintiffs re-allege the facts stated herein.

4.2 Mr. Martell and/ or Premier Landscaping contracted with Plaintiffs to perform all work pursuant to the Plans in accordance with generally accepted professional standards.

4.3 Mr. Martell and/ or Premier Landscaping contracted with Plaintiffs to perform all work pursuant to the Plans in compliance with applicable building codes.

4.4 Mr. Martell and/ or Premier Landscaping contracted with Plaintiffs to perform all work pursuant to the Plans for \$400,000.

- 1 4.5 Mr. Martell and/ or Premier Landscaping breached the contract with Plaintiffs when
2
3 Mr. Martell and/ or Premier Landscaping later raised the price of the contract to an
4 amount in excess of \$400,000 for the same scope of work pursuant to the Plans.
5
6 4.6 Mr. Martell and/ or Premier Landscaping contracted with Plaintiffs to perform all
7
8 work pursuant to the Plans plus change orders for \$520,000.
9
10 4.7 Mr. Martell and/ or Premier Landscaping breached the contract when Mr. Martell
11
12 and/ or Premier Landscaping failed to complete all work pursuant to the Plans plus
13
14 change orders.
15
16 4.8 Mr. Martell and/ or Premier Landscaping breached the contract when Mr. Martell
17
18 and/ or Premier Landscaping failed to perform all work in accordance with
19
20 generally accepted professional standards, as identified in Paragraph 3.40.
21
22 4.9 Mr. Martell and/ or Premier Landscaping breached the contract when Mr. Martell
23
24 and/ or Premier Landscaping failed to perform all work in compliance with
25
26 applicable building codes, as identified in Paragraph 3.40.
27
28 4.10 Mr. Martell promised Plaintiffs that he would correct the defective coating applied
29
30 to Plaintiffs' pool, hot tub, and pool slide no matter what.
31
32 4.11 Mr. Martell breached the promise identified in Paragraph 4.10 when Mr. Martell
33
34 failed to correct the defective coating applied to Plaintiffs' pool, hot tub, and pool
35
36 slide.
37
38 4.12 To mitigate their damages, Plaintiffs have hired different contractors to remedy Mr.
39
 Martell and/ or Premier Landscaping's multiple breaches of contract.

4.13 Plaintiffs have paid in excess of \$300,000 to remedy Mr. Martell and/ or Premier Landscaping's breaches of contract.

4.14 As a result of Mr. Martell and/ or Premier Landscaping's breaches of contract, Plaintiffs have suffered physical damage to their residence.

V. COUNT TWO – BREACH OF EXPRESS WARRANTY

5.1 Plaintiffs re-allege the facts stated herein.

5.2 Mr. Martell and/ or Premier Landscaping expressly warranted to Plaintiffs that all work would be performed in accordance with generally accepted professional standards.

5.3 Mr. Martell and/ or Premier Landscaping breached the express warranty identified in Paragraph 5.2 by failing to perform all work in accordance with generally accepted professional standards, as identified in Paragraph 3.40.

5.4 Mr. Martell and/ or Premier Landscaping expressly warranted to Plaintiffs that all work would be performed in compliance with applicable building codes.

5.5 Mr. Martell and/ or Premier Landscaping breached the express warranty identified in Paragraph 5.4 by failing to perform all work in accordance with generally accepted professional standards, as identified in Paragraphs 3.40

VI. COUNT THREE - FRAUD

6.1 Plaintiffs re-allege the facts stated herein

6.2 Mr. Martell knew Plaintiffs would not enter the construction contract with him and/or Premier Landscaping if the contract price exceeded \$400,000.

1 6.3 Mr. Martell had no intention of honoring the original contract price of \$400,000 for
2
3 completion of all work pursuant to the Plans in accordance with generally accepted
4
5 professional standards and in compliance with building codes.

14 6.6 After passing the point of no return on the construction project, Mr. Martell
15 informed the Plaintiffs the cost of their construction project would now be
16 significantly higher than \$400,000.
17
18

23 6.8 Mr. Martell fraudulently misrepresented the materials purchased for the Project by
24
25 charging Plaintiffs for materials that were not in fact purchased or used on the
26
27 Project.

28 6.9 Mr. Martell fraudulently misrepresented to Plaintiffs that all funds received from
29 them had been expended on the Project.
30
31

32 6.10 Mr. Martell fraudulently diverted funds from the Project to benefit him personally.

37
38 6.12 Mr. Martell intended to deceive the Plaintiffs with his fraudulent conduct

6.13 Mr. Martell's fraudulent conduct served Mr. Martell's personal benefit to Plaintiffs' detriment.

6.14 Mr. Martell's fraudulent conduct served to benefit Mr. and Mrs. Martell's marital community to Plaintiffs' detriment.

6.15 Mr. Martell's fraudulent conduct violated and/ or evaded his corporate duties to Premier Landscaping.

6.16 Mr. Martell's fraudulent conduct was an abuse of Premier Landscaping's corporate form.

6.17 As a result of Mr. Martell's fraudulent conduct, Plaintiffs have been damaged in an amount no less than \$420,000.

6.18 As a result of Mr. Martell's fraudulent actions, Mr. Martell is personally liable to Plaintiffs for their damages.

6.19 As a result of Mr. Martell's fraudulent actions, Mr. and Mrs. Martell's marital community is liable to Plaintiffs for their damages.

VII. COUNT FOUR – CONSUMER PROTECTION ACT

7.1 Plaintiffs re-allege the facts stated herein.

7.2 Mr. Martell and/ or Premier Landscaping's breaches of contract and express warranties constitute unfair and deceptive practices under the Consumer Protection Act.

7.3 Mr. Martell and/ or Premier Landscaping's unfair and deceptive practices identified in Paragraph 7.2 were conducted in trade or commerce.

7.4 Mr. Martell and/ or Premier Landscaping's unfair and deceptive practices identified in Paragraph 7.2 caused Plaintiffs' injuries.

7.5 Mr. Martell and/ or Premier Landscaping's unfair and deceptive practices identified in Paragraph 7.2 impact the public interest.

7.6 Mr. Martell's fraudulent conduct constitutes unfair and deceptive practices under the Consumer Protection Act.

7.7 Mr. Martell unfair and deceptive practices identified in Paragraph 7.6 were conducted in trade or commerce.

7.8 Mr. Martell unfair and deceptive practices identified in Paragraph 7.6 caused Plaintiffs' injuries.

7.9 Mr. Martell unfair and deceptive practices identified in Paragraph 7.6 impact the public interest.

VIII. COUNT FIVE – RECOVERY AGAINST THE SURETY BOND

8.1Defendant, American, is the bonding company for Premier Landscaping to insure
Premier Landscaping for the type of damages alleged herein.

8.2 American is liable to Plaintiffs up to the penal sum of the bond or as otherwise provided by RCW 18.27.

IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for the following relief:

9.1 For Judgment against Defendants in an amount to be proven at trial;

- 1 9.2 For Judgment against Defendant, American, for the penal sum of the bond or as
2
3 otherwise provided by RCW 18.27.
4
5 9.3 For an award of post-judgment interest at a rate of 12% per annum;
6
7 9.4 For an award of reasonable attorney fees and costs pursuant to RCW 18.27, RCW
8
9 19.86, or other applicable law;
10
11 9.5 For an award of damages in an amount to be proven at trial;
12
13 9.6 For treble damages pursuant to RCW 19.86; and
14
15 9.7 For such other and further relief as the Court finds just and proper.

16
17 DATED this 12 day of December, 2018.

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LEAVY SCHULTZ & DAVIS, P.S.

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25 Attorneys for Plaintiffs